

**UNITED STATES PATENT AND TRADEMARK
OFFICE**

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: February 14, 2006

Cancellation No. 92044526

**Live in Love, Inc., d/b/a
Family Labels**

v.

**Laura N. Sheppard, d/b/a Signs
of Love**

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

Discovery was last set to close on February 3, 2006, in accordance with the consented request submitted by petitioner on August 31, 2006 and granted automatically by the Board via the ESTTA system. This case now comes up on petitioner's fully briefed motion, filed February 2, 2006, to extend discovery for 120 days.

In support of its motion, petitioner indicates that the parties have exchanged and responded to discovery requests; that petitioner first sent discovery requests on June 11, 2005, accompanied by a proposed protective agreement for the exchange of confidential information and materials; that the parties exchanged draft protective agreements; that on November 3, 2005, respondent noted she had not received petitioner's October 3, 2005 package including the latest draft of the protective agreement and petitioner's discovery responses; and that petitioner sent such materials the next day to respondent via

email, and respondent confirmed receipt thereof. Petitioner argues that it heard nothing further from respondent so sent another email in January 2006 requesting the status of the proposed protective agreement and seeking a four-month extension of discovery. As an additional reason for requesting the four-month extension, petitioner informed respondent that petitioner's attorney is unable to travel due to her advanced state of pregnancy and imminent absence from the office on maternity leave. According to petitioner, respondent indicated again that she had not received petitioner's discovery responses, so petitioner, on January 31, 2006, sent such responses and proposed protective agreement for a third time, by email. Petitioner contends that it followed up several on its request to extend discovery, and that respondent's attorney indicated he had not heard from his client, but conveyed to petitioner that he believed his client would look upon the request as "merely unnecessary delay" because the website for petitioner's attorney "indicates a number of other attorneys who appear capable of dealing with this case" during the absence of petitioner's attorney. Petitioner argues that it has been diligent during discovery, serving requests early in the discovery period, along with a proposed protective agreement, and following up in a timely manner.

In response, respondent argues that the matter of the proposed protective agreement could have been resolved as early as August 2005 had petitioner executed the document; and that

respondent requested an editable version containing petitioner's October 3, 2005 changes on November 1, 2005, but only received such a version on January 31, 2006. Respondent argues that a 120 extension of discovery "spans more than the duration of Petitioner's counsel's maternity leave" and is, thus, excessive and unnecessary, but indicates that she is agreeable to a shorter period of extension equal to the length of the maternity leave, particularly since there are other attorneys available to handle this matter while petitioner's attorney is out of the office.

In reply, petitioner, noting that respondent apparently agrees to extend for 90 days while petitioner moved for 120 days, argues that the extension it seeks includes a period after the return of its counsel from maternity leave to schedule depositions, and that this additional time sought does not adversely impact the schedule.

The standard for allowing an extension of time prior to the expiration of the prescribed period is that of "good cause." See Fed. R. Civ. P. 6(b)(1). A party moving to extend time must set forth with particularity the facts said to constitute good cause; and demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay. See TBMP §509.01(a) (2d ed. rev. 2004).

The Board recognizes that respondent has agreed to a 90-day extension. The Board finds further that petitioner has shown good cause for the sought extension of 120 days. Extended maternity leave is ordinarily sufficient to establish good cause

to justify an extension of time. *See Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848 (TTAB 2000) (motion denied based on the specific circumstances presented and the repeated misconduct encountered). In this case, the parties exchanged discovery requests and responses early in the period, and were working on a stipulated protective agreement. Draft agreements were exchanged over a period of several months. Apparently, respondent did not receive some correspondence from petitioner, sent by regular mail and by email.¹ However, it was reasonable for petitioner to interpret respondent's November 4, 2005 email ("Sounds good. Thanks.") as confirmation of receipt of petitioner's discovery responses and the proposed protective agreement (previously sent by first class mail), thus believing the next step was to be taken by respondent. Consequently, petitioner has not acted in a manner that shows a lack of diligence or pattern of delay. Additionally, it is reasonable to allow time for petitioner's attorney to return from maternity leave, refresh herself with the case, including any new developments made while she was out, and participate in discovery depositions. Any actions taken by

¹ In this day and age, electronic communication is becoming the norm. Indeed, the Board encourages electronic filing. Sometimes, and for numerous reasons, the electronic transmission is not completed and the receiving party will have no way of knowing that something has been sent because, through no fault of its own, it has not received the correspondence. Fortunately, practice before the Board is such that there is usually ample time set in a schedule to rectify the situation by, for example, following up later and resending the correspondence as necessary. Notwithstanding generous schedules, often a month may pass before it is understood that something was sent and not received. Consequently, the passage of time here arising from the purported non-

attorneys with the law firm retained by petitioner while petitioner's attorney is out may advance the case and include matters such as finalizing the protective agreement, supplementing discovery responses where such responses were withheld based on confidentiality or the proprietary nature of such responses, and exploring possible dates with respondent for discovery depositions.

Accordingly, petitioner's motion to extend discovery by 120 days is granted. Dates are set later in this order.

The parties have invested some effort in drafting a mutually agreeable protective agreement governing the exchange of confidential and proprietary information and materials. While neither party has directly brought this matter before the Board, it is clear that finalizing such an agreement is in the interest of moving this case forward. The parties may be aware that the Board rarely becomes involved in the details of any such proposed protective agreement/order but, instead, imposes its standardized protective order in such situation.² Inasmuch as the parties appear desirous of including their own custom provisions to such an agreement/order, they are allowed until **thirty days** (without prejudice) from the mailing date of this order to submit their

receipt of the proposed protective agreement does not adversely affect this proceeding.

² The standardized protective order is available on-line at www.uspto.gov by accessing the "Trademarks" menu, then selecting "About TTAB."

stipulated protective agreement.³ Once a stipulated protective agreement is entered into, the parties are allowed until **sixty days** (without prejudice) from the mailing date of this order to supplement their discovery responses with any information or materials withheld on the basis that such information or materials were confidential or proprietary.

Discovery and trial dates are reset as indicated below:

THE PERIOD FOR DISCOVERY TO CLOSE:	June 3, 2006
30-day testimony period for party in position of plaintiff to close:	September 1, 2006
30-day testimony period for party in position of defendant to close:	October 31, 2006
15-day rebuttal testimony period to close:	December 15, 2006

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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³ Further delays may be occasioned in this case if the Board is presented with a motion requiring consideration of provisions of any proposed protective order.